

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.*
PATRICK MORRISEY,
ATTORNEY GENERAL,

Plaintiff,

v.

Civ. Action No. _____

MID VALLEY MART, LLC;
ACHRAF ASSI, individually and
as manager of Mid Valley Mart, LLC; and
JANE DOE, employee of Mid Valley Mart, LLC.

Defendants.

**COMPLAINT AND PETITION FOR
PRELIMINARY AND PERMANENT INJUNCTION**

This action is brought pursuant to the provisions of the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101, *et seq.*, which authorizes the Attorney General of West Virginia to file enforcement actions. The State of West Virginia, by and through its duly elected Attorney General, Patrick Morrissey (hereinafter “the State”), the plaintiff in this matter, has reason to believe that the above-named Defendants have violated the Consumer Credit and Protection Act and engaged in other unlawful acts, including specifically utilization of unfair prices during a declared state of emergency.

PARTIES

1. The State, by and through the Attorney General, is authorized to bring this action pursuant to the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101, *et seq.* (the “Act”).

2. Defendant, Mid Valley Mart, LLC, d.b.a. Mid Valley Mart I and Mid Valley Mart II, is a for-profit limited liability company organized under the laws of the State of West Virginia. Mid Valley Mart, LLC's principal place of business and registered address is 3706 Teays Valley Road, Hurricane, WV 25526. Mid Valley Mart LLC also operates Mid Valley Mart II located at 2494 U.S. 60, Hurricane, WV 25526.

3. Mid Valley Mart LLC is licensed, registered and has been conducting business in West Virginia since at least October 15, 2004.

4. Achraf Assi is the registered manager of Mid Valley Mart, LLC, and upon information and belief, resides in Putnam County, West Virginia.

5. JANE DOE is the pseudonym used for the employee of Mid Valley Mart, LLC, who was working as a clerk at Mid Valley Mart II on or about January 10, 2014, and whose name is currently unknown.

JURISDICTION AND VENUE

6. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

7. Venue is proper in this Court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a)(2).

BACKGROUND

8. Defendant Assi is the manager of Mid Valley Mart, LLC and since 2004 has operated two retail stores in Putnam County.

9. One store is Mid Valley Mart located at 3706 Teays Valley Road, Hurricane, West Virginia, 25526.

10. The second store is Mid Valley Mart II located at 2494 U.S. 60, Hurricane, West Virginia, 25526.

11. Both Mid Valley Mart and Mid Valley Mart II sell gasoline and operate a related retail store in which consumer food items, essential consumer items, goods and supplies are sold.

12. Among the consumer items sold by Defendants at their stores is bottled water, which they sell in various sizes and containers.

13. On Thursday, January 9, 2014, the Governor of West Virginia declared a state of emergency due to a contamination of the water supply operated by West Virginia American Water.

14. The state of emergency applied to nine (9) counties, including specifically Putnam County, West Virginia.

15. The water contamination prompted a DO NOT USE declaration and residents and consumers in the nine affected counties were directed not to use, bathe, or drink the tap water.

16. As a result of the DO NOT USE order, bottled water, a consumer good and food item, additionally became an essential consumer item and an emergency supply, as contemplated and defined in W.Va. Code § 46A-6J-2.

17. Fearing a scarcity of water, consumers rushed to retail stores Thursday night and Friday morning in order to purchase as much bottled water as possible.

FIRST CAUSE OF ACTION
(Unfair Price Practices, W.Va. Code § 46A-6J-3)

18. The State restates and reasserts the allegations contained in paragraphs 1 through 17 as if each were set forth herein in their entirety.

19. Upon information and belief, for more than 10 days prior to the declared state of emergency, Defendants sold bottled water at each store, including in 1-gallon container sizes.

20. Upon information and belief, Defendants specifically sold 1-gallon containers of Tyler Mountain Spring Water, at a price of \$1.59 per gallon container more than 10 days prior to the declared state of emergency.

21. However, on the morning of Friday, January 10, 2014, after the declared state of emergency, the Defendants increased the price per gallon of Tyler Mountain Spring Water to \$3.39 per gallon of water.

22. This inflated price was charged to consumers seeking water at both the Mid Valley Mart I and Mid Valley Mart II store on January 10, 2014.

23. This inflated price constituted an increase of more than 100% over the non-state of emergency price.

24. Upon information and belief, Defendants continued to charge consumers the inflated price of \$3.39 for a one gallon of water for at least a week thereafter.

25. That a 10% increase in the previous price of \$1.59 would be \$1.75 per gallon. The increase in price to \$3.39 is in excess of the 10% allowable increase in price after a declaration of a state of emergency.

26. Upon information and belief, Tyler Mountain Spring Water did not raise its prices.

27. Pursuant to West Virginia Code § 46A-6J-3, during a declared state of emergency, it is unlawful for an entity to sell consumer goods, consumer food items, essential consumer items, or emergency supplies for a price greater than ten percent (10%) above the price charged by that person for those goods or services on the tenth day immediately preceding the declaration of emergency.

28. By selling 1-gallon jugs of water at a price 100% greater than the non-declared state of emergency price ten days prior, Defendants engaged in price gouging and unfair price practices in violation of W.Va. Code § 46A-6J-3.

29. Pursuant to W.Va. Code § 46A-6J-5, a violation of W.Va. Code § 46A-6J-3, constitutes an "unfair or deceptive act or practice" and is subject to the enforcement provisions and remedies provided by the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101, *et seq.*

SECOND CAUSE OF ACTION

(Deceptive Acts or Practices, W.Va. Code § 46A-6-104)

30. The State restates and reasserts the allegations contained in paragraphs 1 through 29 as if each were set forth herein in their entirety.

31. Pursuant to W.Va. Code § 46A-104, it is unlawful for an entity to engage in unfair methods of competition and unfair or deceptive acts or practices in the sale of a good.

32. W.Va. Code § 46A-6-102(7) includes in its definition of "Unfair methods of competition and unfair or deceptive acts or practices" the following:

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or

omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

33. Upon information and belief, Defendants engaged in unfair and deceptive practices in charging the inflated rate to consumers at their stores.

34. One particular incident occurred on the morning of Friday, January 10 2014, when a consumer was charged a price of \$1.59 for six (6) 1-gallon jugs, but then charged \$3.39 for twelve (12) additional 1-gallon jugs about an hour later.

35. Upon information and belief, the consumer arrived at the Mid Valley Mart II store around 9:00 a.m. At the time, the consumer sought to purchase a total of eighteen (18) 1-gallon jugs of Tyler Mountain Spring Water.

36. The employee working at Defendant's store (hereinafter referred to as JANE DOE) told the consumer that she would sell him six of the 1-gallon jugs of water at a price of \$1.59 per gallon jug. However, upon information and belief, the clerk told this consumer that he would have to wait to see how much the other 12 jugs would cost "depending on whether Tyler Mountain raised its prices."

37. Upon information and belief, the consumer returned to the Mid Valley Mart approximately one hour later and was charged \$3.39 per 1-gallon jug of Tyler Mountain Spring Water for the remaining twelve (12) gallons for a total price of \$40.78.

38. In initially refusing to sell the latter twelve jugs of water at \$1.59 per gallon, and then later selling them at a higher rate more than 100% markup, Defendant JANE DOE misrepresented and concealed the basis for the mark-up in violation of W.Va. Code § 46A-6-104 as defined by § 46A-6-102(7)(M) and (N).

39. Defendant JANE DOE further made false statements or representations at the time of the sale as to the refusal to sell the other two cases at the same \$1.59 rate in violation of W.Va. Code § 46A-6-104 as defined by § 46A-6-102(7)(M) and (N).

40. Defendant JANE DOE further made false statements and/or misrepresentations in omitting material facts as to the reason for the mark-up in violation of W.Va. Code § 46A-6-104 as defined by § 46A-6-102(7)(M) and (N).

THIRD CAUSE OF ACTION
(Imputed Liability)

41. The State restates and reasserts the allegations contained in paragraphs 1 through 40 as if each were set forth herein in their entirety.

42. JANE DOE is an agent, representative, and/or employee of Defendants Mid Valley Mart, LLC and/or Defendant Assi and acted in such capacity at all relevant times of her conduct.

43. Defendants Mid Valley Mart, LLC and Assi are responsible and liable, jointly and severally, for the conduct of its agents, representatives, and employees.

44. Upon information and belief, JANE DOE acted at the direction and authority of Defendants Mid Valley Mart, LLC and Assi in selling the water at an inflated 100% mark-up price during a declared state of emergency.

FOURTH CAUSE OF ACTION
(Unconscionable Conduct)

45. The State restates and reasserts the allegations contained in paragraphs 1 through 44 as if each were set forth herein in their entirety.

46. The DO NOT USE water order for residents in the affected nine counties placed individuals in a dire position to obtain bottled water. Given the high demand and limited supply of bottled water, the consumers who shopped at Mid Valley Mart I and Mid Valley Mart II had little to no bargaining power with which to choose or negotiate a purchase.

47. Defendants preyed on this vulnerability and made a willful, intentional decision to raise the rates on bottled water knowing that the consumer would have little to no choice but to pay the inflated rate.

48. Upon information and belief, Defendant Assi made the intentional and willful decision to raise the cost of the bottled water, thereby deriving an inflated profit off the desperate position of Putnam County residents and consumers.

49. Defendant Assi's conduct was unconscionable, as well as an unfair method of competition and unfair or deceptive act or practice of W.Va. Code § 46A-6-104 as defined by § 46A-6-102(7).

50. Separately, Defendants Mid Valley Mart, LLC, conduct as a whole constituted violations of the unfair method of competition and unfair or deceptive act or practice in violation of W.Va. Code § 46A-6-104 as defined by § 46A-6-102(7).

FIFTH CAUSE OF ACTION

(Alter Ego)

51. The State restates and reasserts the allegations contained in paragraphs 1 through 50 as if each were set forth herein in their entirety.

52. Upon information and belief, Defendant Mid Valley Mart, LLC is a closely held limited liability company consisting of only a few managers, notably Defendant Assi and another manager Gina Assi.

53. Upon information and belief, Defendant Mid Valley Mart, LLC is operated directly by Defendant Assi and is one in the same with Defendant Mid Valley Mart so as possess a unity of interest.

54. Upon information and belief, Defendant Assi, and/or his agent, representative, or employee, took an intentional and willful action in inflating the price of water during a declared state of emergency.

55. Given the unity of interest and actions/conduct of its managers, Defendant Assi is personally liable for all violations of West Virginia law committed by Mid Valley Mart, LLC, and its agents.

SIXTH CAUSE OF ACTION

(Preliminary and Permanent Injunctive Relief)

56. The State restates and reasserts the allegations contained in paragraphs 1 through 55 as if each were set forth herein in their entirety.

57. Pursuant to the West Virginia Consumer Credit and Protection Act, including notably W.Va. Code § 46A-7- 108 through 110, the State seeks to enjoin the Defendants from any ongoing current violations as well as prohibit similar conduct in the future.

58. Upon information and belief, Defendants continued to engage in their unlawful practices and conduct for more than a week, including up until January 17, 2014.

59. On January 17, 2014, the West Virginia Attorney General's Office filed an investigative subpoena upon the Defendants on the basis of information of the increased pricing.

60. In light of the ongoing nature of the water contamination problem, as well as the continuing need and use of bottled water, the State seeks the following temporary relief:

- a. Conduct a hearing on this matter as soon as possible pursuant to W. Va. Code § 46A-7-110; and
- b. Grant an immediate preliminary injunction prohibiting Defendants Mid Valley Mart, LLC, Achraf Assi, and JANE DOE from selling or attempting to sell any consumer goods, consumer food items, essential consumer items, or emergency supplies for a price greater than ten percent (10%) above the price charged by that person for those goods or services on the tenth day immediately preceding the declaration of emergency.

61. Additionally, the State seeks permanent injunctive relief prohibiting Defendants from selling or attempting to sell any consumer goods, consumer food items, essential consumer items, or emergency supplies for a price greater than ten percent (10%) above the price charged by that person for those goods or services on the tenth day immediately preceding the declaration of emergency.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of West Virginia ex rel. Attorney General Patrick Morrisey hereby prays for the following:

1. Enter an Order PERMANENTLY ENJOINING and RESTRAINING Defendants Mid Valley Mart, LLC, Achraf Assi, JANE DOE, and their officers, directors, managers, agents, employees, servants, independent contractors, heirs, successors, assigns, and transferees from engaging in unfair or deceptive acts or practices in violation of W. Va. Code §§ 46A-6-101 and -104 in general and, specifically, from engaging in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-102(7)(M) and (N) and § 46A-6J-3, including specifically a prohibition from price gouging;

2. Enter an Order finding Achraf Assi is the alter ego of Mid Valley Mart, LLC and liable for all violations of West Virginia law committed by Mid Valley Mart, LLC or its agents;

3. Enter judgment against Mid Valley Mart, LLC, Achraf Assi, and JANE DOE, jointly and severally, and Order them to pay reimbursement and/or restitution to West Virginia consumers for all monies paid above the price of the one gallon water on the 10th day preceding the date of the state of emergency declaration that were paid to Defendants and their agents, vendors or contractors during the state of emergency;

4. Enter judgment against Mid Valley Mart, LLC, Achraf Assi, and JANE DOE, jointly and severally, and Order them to pay all damages suffered by West Virginia consumers due to the Defendants' unlawful actions and conduct;

5. Enter judgment against and Order Defendants, jointly and severally, to pay to the State of West Virginia all its attorneys' fees, court costs, investigation costs, and all other costs associated with the investigation and maintenance and prosecution of this action;

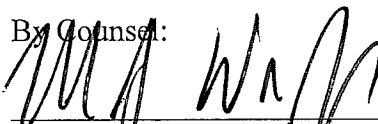
6. Enter judgment against and Order Defendants to each pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for each and every willful and repeated violation of chapter 46A of the West Virginia Code that they committed, as provided in W. Va. Code § 46A-7-111(2).

7. Grant such other and further relief as the Court deems just and appropriate.

Respectfully Submitted,

**STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL**

By Counsel:



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